

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY MARTIN,

No. C 07-5747 CW

Plaintiff,

v.

ORDER OF DISMISSAL

D. ANDREW BYRNE, et al.,

Defendants.

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On January 16, 2008, Defendants filed a motion to dismiss the complaint. Plaintiff did not oppose this motion, but instead moved for a voluntary dismissal of his case on February 19, 2008.

Under Rule 41(a)(1) of the Federal Rules of Civil Procedure, "a plaintiff has an absolute right voluntarily to dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995). "Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1)." Id.

Although no court order is required for a voluntary dismissal under Rule 41(a)(1), id., Plaintiff's motion (Docket No. 23) is GRANTED and this action is DISMISSED WITHOUT PREJUDICE.

1 Defendants' motion to dismiss (Docket No. 19) is DENIED as moot.  
2 The clerk shall close the file. Each party shall bear its own  
3 costs.

4 IT IS SO ORDERED.



5  
6 Dated: 4/8/08

7 \_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MARTIN et al,

Case Number: CV07-05747 CW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

BYRNE et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Arlo Hale Smith  
Arlo Hale Smith, Esq.  
66 San Fernando Way  
San Francisco, CA 94127

Rodney Martin  
P.O. Box 1591  
El Cerrito, CA 94530

Dated: April 8, 2008

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk